

**IN THE UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

<b>RICHARD ALLEN GERBER</b>	:	<b>CIVIL ACTION NO. 1:06-CV-1358</b>
	:	
<b>Plaintiff</b>	:	<b>(Judge Conner)</b>
	:	
<b>v.</b>	:	
	:	
<b>GENE FISCHI, et al.,</b>	:	
	:	
<b>Defendants</b>	:	

**ORDER**

AND NOW, this 28th day of September, 2006, upon consideration of defendants' motion to dismiss (Doc. 16), and the report of the magistrate judge (Doc. 8), to which no objections were filed, recommending that defendants Gene Fischl ("Fischl") and the Luzerne County District Attorney be dismissed, see 28 U.S.C. § 1915A, and, following an independent review of the record, it appearing that Fischl has no constitutional or federal duty to supply the information requested by plaintiff, and that the District Attorney is entitled to absolute immunity for decisions concerning whether to prosecute, see Kulwicki v. Dawson, 969 F.2d 1454, 1463-64 (3d Cir. 1992); see also Imbler v. Pachtman, 424 U.S. 409, 430-31 (1976) (stating that the decision to prosecute is at the core of a prosecutor's judicial role and that absolute immunity adheres to all functions implemented through a prosecutor's "quasi-judicial" role)), it is hereby ORDERED that:

1. The report and recommendation of the magistrate judge (Doc. 8) is ADOPTED.

2. The claims against defendants Gene Fischl and the Luzerne County District Attorney are DISMISSED. See 28 U.S.C. § 1915A(b)(1).
3. Defendants Gene Fischl and the Luzerne County District Attorney are DROPPED as parties to the above-captioned case. See FED. R. CIV. P. 21.
4. The motion to dismiss (Doc. 16) is DENIED as moot.
5. The above-captioned case is REMANDED to the magistrate judge for further proceedings.

S/ Christopher C. Conner  
CHRISTOPHER C. CONNER  
United States District Judge